IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.45015 OF 2002
AND
WPMP.NO.65826 OF 2002
and
WVMP.NO.1810 OF 2002

Sri Vasavi Kannikaparameswari Devasthanam
rep. by its Managing Trustee
B. Venkatesan,
104, Gandhi Road,
Trivellore 602 001. .. Petitioner

-Vs-

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Kancheepuram.

3. The Junior Engineer,
Tamil Nadu Electricity Board,
South Town, Trivellore.

4. Thiru L.S. Bhikam Chand,
44, Kondamapuram Street,
Trivellore 602 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Mandamus as stated therein.

For Petitioner : Mr.V. Sitharanjandas

For Respondents 1to3: Mr.G. Vasudevan

Respondent-4 : Mr. V.N. Mohanraj

:J U D G M E N T

Petitioner is the Managing Trustee of Sri Vasavi Kannikaparameswari

Devasthanam. The petitioner has prayed for writ of Mandamus forbearing the respondents 1 to 3 from erecting transformer in front of the temple on Mosque Street, Trivellore and to remove the pillars already fixed.

2. It is stated that the respondents 1 to 3 have erected electric poles in front of the door of the temple premises abutting Mosque Road.

3. Interim stay having been granted, the petition for vacating the stay has been filed on behalf of the respondent No.4, primarily for whose benefit, the transformer is being erected.

4. Counsel for the respondents 1 to 3 has obtained instructions and also produced the relevant files and photographs. A counter affidavit has also been filed on behalf of the respondents 1 to 3.

5. A perusal of the materials on record as well as the photographs produced would clearly indicate that electric poles have been erected adjacent to the door of the temple in Mosque Road. It is of course true that the aforesaid door is backside door of the temple and there is access to the temple from the other road on front side.

6. Learned counsel appearing for the respondents 1 to 3 has contended that since poles are being erected on public land belonging to the Government and not belonging to the petitioner, no objection can be raised by the petitioner. He has placed reliance upon the decisions reported in 2000 (II) CTC 537 (PHARMASIVAM AND ANOTHER v. TAMIL NADU ELECTRICITY BOARD, REP. BY ITS SUPERINTENDIN G ENGINEER, ERODE AND 2 OTHERS), 2001(4) CTC 129 (A.R.A.S. DURAISAMY NADAR v. TAMIL NADU ELECTRICITY BOARD, REP. BY ITS SUPERINTENDING ENGINEER, TUTICORIN) and 199 9(II)CTC 614 (THE SUPERINTENDING ENGINEER, TNEB BASIN BRIDE, POWER HOUSE, CHENNAI AND THREE OTHERS v. THANGAPRAKASWAM)

7. In 2000 (II)CTC 537, while considering the question of grant of injunction in a suit for prohibitory injunction, the matter has come to High Court in Second Appeal. In that case, the transformer is sought to be erected in front of the plaintiff□s property. While considering this aspect, this Court has observed :

□ . . . 7. The evidence of D.W.1 was also placed before me. On going by his evidence, it is clear that no damage will be caused to the plaintiff□s property and the installation of a transformer is absolutely necessary so as to maintain the voltage stability. The witness also swears that the installation of transformer is an urgent necessity of the locality and he also said that the voltage stability cannot be maintained by making necessary adjustments in the existing transformers situated near the plaint property. The lower appellate court has also considered the evidence of P.W.1. The plaintiff has not given any evidence to show how the installation of the transformer will affect his property. His only apprehension is that installation may affect injuriously in future. Merely on the basis of apprehension, a decree for injunction cannot be granted. The respondents are

doing a lawful act and they are the statutory authorities. To prevent them from discharging the statutory

functions, will amount to a direction against law. From the aforesaid decision, it is apparent that no damage was caused to the plaintiff's property as the plaintiff had not given any evidence to show how installation of the transformer would affect his property.

8. In the present case, the materials on record, including the photographs, would amply make it clear that the transformer would be very near to the door of the temple and one has to pass beneath the transformer while going inside the temple by using the door. The decision in 2000(II)CTC 537 is, therefore, clearly distinguishable.

9. The decision reported in 1999(II)CTC 614 is also distinguishable inasmuch as, the erection was on the basis of a sanctioned scheme, which is not so in the present case.

10. The decision reported in 2001(4) CTC 129 is also distinguishable, wherein it was observed : . . . On going through the materials available, I am unable to find that the access of the plaintiff to the property is in any way obstructed to or curtailed by the installation of the transformer as indicated in the Plan. . . . .

11. As already indicated, in the present case, the access to the temple from the Mosque road through the existing door would be obstructed or curtailed if the transformer would be erected just in front of the door, as apparent from the photographs and other materials on record. Moreover, on a perusal of the records, it is apparent that initially the proposal was to erect the transformer at a different place, but subsequently the same has been shifted. The erection of transformer is basically for the benefit of the respondent No.4, though incidentally it may benefit other persons in the locality. If the respondent No.4 is unable to provide any land or the land provided by him would not be suitable, the respondents 1 to 3 should try to locate the transformer in any other suitable place. 12.
For the aforesaid reasons, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes
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To

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